

JAN 27 2012

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re

TRISHA MEJIA DONNELL,

Debtor.

Case No. 11-47438-A-13J

Docket Control No.

Date:

Time:

MEMORANDUM

This chapter 13 case was filed on November 22, 2011. The petition was not accompanied by all schedules, statements, and a proposed chapter 13 plan. Consequently, the intake clerk hand-delivered to the debtor a Notice of Incomplete Filing. That Notice informed the debtor that if these documents were not filed by December 6, the case would be dismissed unless the debtor had obtained an extension of time to file the documents.

On December 6, the debtor sought and was given an extension of time to file the documents. The court extended the deadline to December 20. The court's order also required the debtor to, not only file a proposed plan, but to serve it with a motion to confirm the plan that was set for hearing on the court's chapter 13 calendar. If the documents were not filed, or if the debtor failed to serve the plan with a motion to confirm it, the order informed the debtor here case would be dismissed on the trustee's ex parte application.

The provision in the order requiring the debtor to file, serve, and set for a hearing a motion to confirm her plan was

1 included because, due to the extended deadline to file the plan,
2 the trustee was unable to serve the plan when he served the
3 notice of the meeting of creditors. When the trustee is able to
4 include a proposed plan with the notice of the meeting of
5 creditors, that notice also informs creditors of the deadline to
6 object to the plan and the date of the confirmation hearing.

7 In this case, the notice of the meeting of creditors was
8 served on December 8. Because the plan was not then on file, the
9 trustee was unable to serve the plan on the creditors.
10 Therefore, it was incumbent of the debtor to do so.

11 Even though the court extended the filing deadline to
12 December 20, the debtor filed the schedules, statements, and the
13 plan on December 9. Unfortunately, the debtor did not also serve
14 the plan with a motion to confirm it by the December 20 deadline.

15 On January 11, the trustee applied for the dismissal of the
16 case due to the debtor's failure to serve the plan with a motion
17 to confirm. The case was dismissed on January 12.

18 Also on January 12, the debtor asked the court for a second
19 extension in order to serve the plan and a motion to confirm it.
20 Because the case had already been dismissed and because the
21 extension was requested well after the expiration of the December
22 20 deadline, the court refused to grant the extension.

23 Now the debtor has filed two additional motions. One
24 requesting that the court vacate the dismissal of the case, and
25 another asking the court to impose the automatic stay. Both
26 motions will be denied.

27 This case is not the first chapter 13 case filed by the
28 debtor. With her spouse, the debtor filed a chapter 13 case,

1 Case No. 10-34425, on June 1, 2010. It was dismissed June 21,
2 2010 because all schedules, statements, and a proposed plan were
3 not filed timely.

4 The debtor and her spouse filed a second chapter 13 case,
5 Case No. 10-37489, on July 1, 2010. This time, all schedules,
6 statements, and a plan were filed timely. And, while the plan
7 was confirmed, the case was dismissed on July 12, 2011 because
8 all plan payments were not made.

9 This case was filed on November 22. On the petition, the
10 debtor disclosed the first case but not second case.

11 From this history, the court draws several conclusions that
12 prompt it to deny the relief in the debtor's two pending motions.

13 First, the debtor is no stranger to this court. She had
14 filed to earlier chapter 13 cases. Therefore, she was well aware
15 of the deadlines for filing documents and confirming a plan.

16 Second, the failure to disclose the second chapter 13 case
17 was a calculated omission. Because that case was dismissed
18 within one year of the filing of this most recent case, 11 U.S.C.
19 § 362(c)(3) was applicable. That is, because this earlier
20 chapter 13 case was dismissed within the prior year, the
21 automatic stay expired 30 days after this case was filed. While
22 the court may extend the automatic stay beyond the 30th day, the
23 debtor must seek and obtain an extension before the 30th day.
24 See 11 U.S.C. § 362(c)(3)(B). The 30th day in this case was
25 December 22.

26 In other words, it appears to the court that the debtor
27 failed to disclose the second case because it was dismissed
28 within one year of this case. By the omission the debtor

1 apparently hoped to avoid the necessity and risk of asking that
2 the automatic stay be extended.

3 While the debtor has now filed a motion to impose the
4 automatic, that motion is not based on section 362(c)(3)(B).
5 Rather, the debtor believes the motion is necessary because her
6 case was dismissed. If it dismissal is vacated, the debtor wants
7 the court also to reinstate the automatic stay.

8 Even if the debtor's motion was based on section
9 362(c)(3)(B), it is too late. A motion to extend the automatic
10 stay had to be filed and adjudicated before December 22. So,
11 even if the court vacated the dismissal, there would be no
12 automatic stay. There has been no automatic stay in this case
13 since December 22.


14 Because there can be no automatic stay in this case, it will
15 do no good to vacate the dismissal. The foreclosure referred to
16 in the motion will occur whether or not the dismissal is vacated.

17 Finally, there is no cause to vacate the dismissal. The
18 debtor was given fair warning that if the plan was not filed,
19 served, and set for a confirmation hearing by December 20, the
20 case would be dismissed. She failed to do all that was required
21 and so her case was dismissed. At this point there is no
22 possibility that a confirmation hearing can be convened within
23 the time frame required by 11 U.S.C. § 1324(b).

24 Separate orders will be entered on the debtor's two motions.

25 Dated: *27 Jan 2012*

By the Court

26
27 
28 Michael S. McManus, Judge
United States Bankruptcy Court

CERTIFICATE OF MAILING

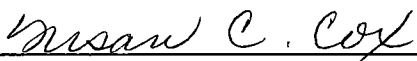
I, Susan C. Cox, in the performance of my duties as a
judicial assistant to the Honorable Michael S. McManus, mailed by
ordinary mail to each of the parties named below a true copy of
the attached document.

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Dated: January 27, 2012



Susan C. Cox
Judicial Assistant to Judge McManus